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80-5816

In THE UNITED STATES SUPREME COURT

Washington, D.C. 20543

A.D. 1980

Appeal from State of Wisconsin Supreme Court in Case No. 80-1317-W decided on August 13, 1980 A.D.

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SUPREME COURT, U.S.

STATE OF WISCONSIN EX REL.,
AMEK bin-RILLA, a/k/as
James R. Preston,

Petitioner-Appellant,

v.

THOMAS R. ISRAEL, Warden,

Respondent-Appellee.

JURISDICTIONAL STATEMENT

Amek bin-Rilla, a/k/as
James R. Preston - Pro Se
Box C Waupun, Wisconsin
53963.

October 28th, 1980 A.D.

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STATEMENT OF QUESTIONS

1. Can a state supreme court circumvent the law of the land by denying a legally applied for petition for a writ of habeas corpus and legally detain a state prisoner in the violation of a Federal Statute? (Re, Title 18 U.S.C., § 1581).

   The State of Wisconsin denied this petitioner the right to file a petition for a writ of habeas corpus and motion thereto, without reason for the decision on August 13, 1980 A.D., in State of Wisconsin ex rel. Amek bin-Rilla a/k/a James R. Preston v. Thomas R. Israel, Case No. 80-1317-W.

2. Cannot this petitioner-appellant enforce a remedy and relief be granted upon rulings in the United States Supreme Court pursuant to Title 28 U.S.C. §§ 2241-2254(b), Fed.R.Civ.Proc., Rules 23 (b)(3), 71 and 81(a)(2)?

   Petitioner-appellant's motion for original jurisdiction and petition for a writ of habeas corpus to the State of Wisconsin Supreme Court was based upon this Court's decisions in Sandstrom v. Montana, 442 U.S. 510 (1979) and Jackson v. Virginia, 99 S.Ct. 2781 (1979) on the question of 'intent' relevant to a state attempt murder charge, and, the fact that a State Public Defender did not appeal a denial of a post-conviction motion to the lower Circuit Court after indicating to this petitioner-appellant that he had been appointed to do so.

REFERENCE TO OFFICIAL DECISION BELOW

The State of Wisconsin Supreme Court denied a motion and petition for a writ of habeas corpus filed by this petitioner-appellant in the case State of Wisconsin ex rel. Amek bin-Rilla a/k/a James R. Preston v. Thomas R. Israel, Case No. 80-1317-W, without a reason, upon the date of August 13, 1980 A.D.

STATEMENT OF CLAIMED GROUNDS OF JURISDICTION OF THE UNITED STATES SUPREME COURT.

The nature of the case on appeal is the denial of a motion and petition for a writ of habeas corpus rendered by the State of Wisconsin Supreme Court on August 13, 1980 A.D. without a reason or reasons therefor.

No evidentiary hearing, motion for rehearing or cross-appeal has been applied for to date.

Petitioner-Appellant believes that Title 28 U.S.C. §§ 1257 (1), 2241, 2254 (b), 1915, 1651, Federal Rules of Civil Procedure, Rules 23 (b)(3), 71, 81 (a)(2) United States Supreme Court Rule 46 and Title 18 U.S.C. §§ 241-242 confers jurisdiction of the appeal upon this Court.

The below listed cases sustain the jurisdiction of this Court;

Adderly v. Wainwright (MD Fla 1967) 272 F Supp 530, 11 FR Serv2d, 81a.22, Case 3.

Adderly v. Wainwright (MD Fla 1968) 46 FRD 97, 13 FR Serv2d 23.3, Case 2.

Anderson v. Nelson (CA9th, 1970) 432 F2d 55.

Cohen v. Beneficial Indus. Loan Corp., (1949) 337 US 541, 546-547, 69 SCt 1221, 93 Led 1528.

Com'r v. Netcher, (CCA 7th, 1944) 143 F2d 484, 486.

Davis v. O'Hara, 266 US 314, 315, 45 SCt 104, 105, 69 Led 303.

Ex parte Hudgings (1919) 249 US 378, 39 SCt 337, 63 Led 656, 11 ALR 333.

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Matter of Heff (1905) 197 US 488, 25 SCt 506, 49 Led 848.

McGautha v. California, (1971) 402 US 183, 91 S Ct 2726, 28 L ed2d 711.

Mead v. Parker, (CA9th, 1972) 464 F2d 1108, 16 FR Serv2d 1029.

Muller v. State, 94 Wis. 2d 450, 289 N.W. 2d 570 (1980).

Reece v. Georgia,(1955) 330 US 85, 87, 76 SCt 167, 100, Led 77.

Sandstrom v. Montana, 442 U.S. 510 (1979).

Southern Railway Co. v. Clift,(1922) 260 US 316, 43 SCt 126, 67 Led 283.

State v. Dreske, Wis. App., 276 N.W. 2d 324.

Urie v. Thompson, 337 US 163, 172-173, 69 SCt 1018, 93 Led 1282, 11 ALR 2d 252.

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Zeckendorf v. Steinfeld (1912) 225 US 445, 32 SCt 728, 56 Led 1156.

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CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED IN THIS APPEAL.

United States Constitution Article VI, Clause two:

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

United States Constitution Article I, Section 9 Clause two:

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

United States Constitution, Amendment XIV:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTIONAL PROVISIONS, STATUTES
AND RULES INVOLVED IN THIS APPEAL...
(Continued)

Title 28 U.S.C. § 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

Title 28 U.S.C. § 2241. Power to grant writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

Title 28 U.S.C. § 2254. State custody; remedies in Federal courts

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

Title 28 U.S.C. § 1915. Proceedings in forma pauperis

(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

Title 18 U.S.C. § 1581. Peonage; obstructing enforcement

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

CONSTITUTIONAL PROVISIONS, STATUTES
AND RULES INVOLVED IN THIS APPEAL...
(Continued)

(§ 1581, continued)..

(b) Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).

Title 28 U.S.C., Federal Rules of Civil Procedure.

Rule 23 (b)(3) CLASS ACTIONS MAINTAINABLE. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition;

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class individually controlling the prosecution or defense of seperate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

Title 28 U.S.C., Federal Rules of Civil Procedure.

Rule 71. Process in Behalf of and Against Persons Not Parties.

When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

Title 28 U.S.C., Federal Rules of Civil Procedure.

Rule 81 (a) (2) TO WHAT PROCEEDINGS APPLICABLE.

(2) These rules are applicable to proceedings for admission to citizenship, habeas corpus, and quo warranto, to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice in civil actions. The writ of habeas corpus, or order to show cause, shall be directed to the person having custody of the person detained. It shall

CONSTITUTIONAL PROVISIONS, STATUTES
AND RULES INVOLVED IN THIS APPEAL...(*)
(Continued)

(Rule 81 (2)(continued)....

....be returned within three days unless for good cause shown additional time is allowed which, in cases brought under 28 U.S.C. § 2254, shall not exceed forty days, and in all other cases shall not exceed twenty days.

(*) 28 U.S.C. § 1651 and 18 U.S.C. §§ 241-242 are used by way of reference in these papers to draw attention to state and Federal punitive and liability statutes for the wilful denial of a legally applied for habeas corpus in state of Wisconsin Courts, re, Wisconsin Statutes, Section 292.09 (below).

292.09 Refusal of writ. If any judge shall wilfully refuse to grant such writ, when legally applied for, he shall be liable to the prisoner in the sum of one thousand dollars.

A STATEMENT OF THE CASE ON APPEAL

Petitioner-appellant was sentenced to a term of 25 consecutive years in the year of June 6th, 1963 A.D. at the Milwaukee County Circuit Court, Branch 12 in the city of Milwaukee, Wisconsin, the Honorable John L. Coffey accepted pleas of guilty to violations of Wisconsin robbery (armed) and attempt murder. The cases were the result of a negotiated plea to nolle prosequi other charges, and were ennumerated as Cases Nos. F-7600, F-7601 and F-7605 (1)(2).

Case No. F-7605 (1)(2) is the matter drawn for attention in these papers.

Said case consisted of charges of attempt robbery (armed) and attempt murder (one).

On May 1st, 1973 A.D. the Wisconsin Supreme Court modified Case No. F-7605 (2)(being the attempt murder charge) to 20 years, thereby reducing the over-all sentence of 50 years to 45 years.

A STATEMENT OF THE CASE ON APPEAL
(Continued)

oner-appellant was without counsel (Attorney) during all
s until the post-conviction appeal in the year, ending with
cation of the 5 years on May 1st, 1973 A.D.

corpus petitioning dates back to the year 1965 A.D. (state)
is petitions have been filed based upon the illegality of
condition-of-confinement, liberty interest, religious
n and oppression and civil rights violations relevant to
ive abuses of constitutional dimensions, in the Federal
this Circuit (Seventh).
ecords will show that no less than 5 petitions have been
tate and Federal Courts concerning the 'intent' as per the
attempt murder (Case No. F-7605 (2) and attempt robbery as
nt as related to 'intent' in the consolidated cases wherein
obbery" and "attempt murder" were in the same transaction
pts."
information in the attempted murder reads that the accused
er-appellant) "did intentionally and feloniously, attempt to
death of a human being", which, is no charge under law,
n "attempt" to cause the death of a human being with the
to "attempt" would indicate that murder was not contemplated.
sequently, petitioner-appellant filed the present denied
in the Wisconsin Supreme Court under Jackson v. Virginia
trom v. Montana wherein they prove (for the time being)
s petitioner-appellant was correct as per his arguments
g the application of the term, "intent." It narrows down
piritual fact that, the "law presumes" the "intent" as the
nds to presume.'
hich, again narrows down to the previous arguments upon the
"intent" wherein in the year 1975 A.D. the sentencing judge
n L. Coffey; now a supreme court judge (see one of abstain-
August 13, 1980 denial (re, APPENDICE (A) attached)),

A STATEMENT OF THE CASE ON APPEAL
(Continued)

...found "intent" suo sponte upon petitioner-appellant's post-conviction motion on the question of "intent" as weighed against the fact that the plea was to the confession which stated that the shooting of the victim in Case No. F-7605 (2) was accidental.

The fact that the circuit court accepted the confession into evidence in support of the guilty plea was conclusive of the act but not the "intent", which, the circuit court judge (re, John L. Coffey) imputed or found according to his own belief, suo sponte. (T.T. page 11 as attached to the habeas corpus petition filed in the Wisconsin Supreme court and denied August 13th, 1980 A.D.).

The nature of this appeal further embraces the fact that, the 1975 A.D. denial of the post-conviction motion based upon intent was to have been appealed by the State Public Defender, one Garret Kavanagh, who never appealed the denial below. (e.g., the communication promising to appeal from the Public Defender was attached to the petition in the state supreme court as an exhibit).

Petitioner-appellant submits as a final aspect of this appeal that, the State of Wisconsin Supreme Court is deliberately holding the writ of habeas corpus process in abeyance, arbitrarily, illegaly (sic), maliciously and with complete impunity for constitutional violations beyond their individual or collective authority to control.

No court of record in this country is permitted to hold the writ of habeas corpus in suspension without a reason.

Petitioner-appellant expects relief on this appeal under the Constitution of the United States as a matter of logic in any such interpretation of said document.

STATEMENT OF THE REASON THE QUESTIONS
PRESENTED REQUIRE CONSIDERATION

Petitioner-appellant claims that no state court should be permitted to suspend the writ of habeas corpus arbitrarily and wilfully under the color of judicial fiat in violation of the United States Constitution and state constitutions 'notwithstanding.'

Petitioner-appellant further claims and believes that if this Court does not deem argument or briefs in this appeal to be pertinent or necessary, that this United States Supreme Court can issue a mandate order to compel enforcement of said constitution binding on the Wisconsin Supreme Court or any other court in this land.

A motion is submitted to file in forma pauperis pursuant to this Court's Rule 46 upon the belief that the indigent as well as the affluent should receive due process and equal protection of the laws wherein anarchy is the consequence of lawlessness perpetuated by person or persons entrusted with the enforcement thereof.

Petitioner-appellant By)
Amek bin-Rilla
(James R. Preston)
Amek bin-Rilla, a/k/as
James R. Preston - Pro Se
Box C Waupun, Wisconsin 53963

October 28th, 1980 A.D.

In THE UNITED STATES SUPREME COURT
Washington, D.C. 20543
A.D. 1980

STATE OF WISCONSIN EX REL.,
AMEK bin-RILLA, a/k/as
James R. Preston,
Petitioner-Appellant,

vs.

THOMAS R. ISRAEL, Warden,

Respondent-Appellee.

Case No. 80-1317-W
State of Wisconsin
Supreme Court.

MOTION FOR LEAVE TO FILE APPEAL IN FORMA PAUPERIS.

Pursuant to Title 28 U.S.C. § 1915, Rules of the United States Supreme Court, Rule 46.1 and citing from: Adkins v. DuPont Co. 335 US 331.

Comes one Amek bin-Rilla, a/k/as, James R. Preston, an adult citizen of the United States presently held in state custody at the Waupun Correctional Institution, Box C Waupun, Wisconsin 53963 serving a sentence of consecutive sentences totaling 45 years imposed and as modified in the years June 6th, 1963 A.D., and May 1st, 1973 A.D., respectively; and having filed a petition for a writ of habeas corpus within the Wisconsin Supreme Court dated July 16th, 1980 A.D. which was denied without reason on August 13, 1980 A.D., and this petitioner firmly believing that he has grounds for relief by being released from state custody under the laws of the United States, herein moves the United States Supreme Court to grant leave to proceed on appeal in forma pauperis per 28 U.S.C. § 1257 (1) wherein the said state supreme court is in violation of the United States Constitution at Article I Section 9 Clause, two, and 18 U.S.C. § 1581 (Peonage) by holding this petitioner in state custody without due process and equal protection of proscribed laws of the United States and the state of Wisconsin under the color of judicial authority, WHEREUPON:

Petitioner-appellant herein prays this Court to grant leave to proceed in forma pauperis upon appeal of this matter, and, has duly attached an affidavit showing that the affiant is not able to defray filing fees and costs of an appeal because of poverty.

Petitioner-Appellant By, Amek bin-Rilla

Amek bin-Rilla, a/k/as

In THE UNITED STATES SUPREME COURT
Washington, D.C. 20543
A.D. 1980

STATE OF WISCONSIN :
: SS AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE
COUNTY OF DODGE : TO FILE AN APPEAL IN FORMA PAUPERIS.

Re: Case No. 80-1317-W, State of Wisconsin ex rel., Amek bin-Rilla, a/k/as, James R. Preston v. Thomas R. Israel, Warden, at Wisconsin Supreme Court, Madison, Wisconsin 53702.

Amek bin-Rilla, a/k/as, James R. Preston, first being duly affirmed and under affirmation do herein depose and state that:

1. I am an inmate at the Waupun Correctional Institution, Box C Waupun, Wisconsin 53963 serving a sentence of 45 years imposed in the year of June 6th, 1963 A.D., as 50 years consecutive modified in the year May 1st, 1973 A.D. in mentioned state.
2. I am unemployed at any such prison task and receive no wage.
3. My present prison account shows approximately $250.
4. I have no bank account, checking account, nor any source of income from any rents or negotiable property subject to the process of execution to discharge a debt.
5. I have no dependents and my next of kin is Prince Karim Hussani Shah Aga Khan IV whose public address is listed as, h. 76 Eaton Square, London, England, S.W. 1.
6. No affidavit has been executed below in the State Supreme Court pursuant to filing in forma pauperis.
7. I am fully aware of the penalties of false swearing and perjury as related to the statements of this affidavit and same is true and correct.

FURTHER AFFIANT SAITH NOT.

Affiant By, Amek bin-Rilla (James R. Preston)
Amek bin-Rilla, a/k/as
James R. Preston
Box C Waupun, WI.
53963.

Subscribed and Sworn to Before Me
this 29th day of October, 1980 A.D.,
after due deposition thereto.

Leonard W. Kwakkel
Notary Public
My Commission Expires 9-23-84.

80-5816

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In THE UNITED STATES SUPREME COURT
Washington, D.C. 20543
A.D. 1980

STATE OF WISCONSIN EX REL.,
AMEK bin-RILLA, a/k/as, James
R. Preston,

Petitioner-Appellant,

vs.

THOMAS R. ISRAEL, Warden,

Respondent-Appellee.

Case No. 80-1317-W
State of Wisconsin
Supreme Court.

NOTICE OF APPEAL*

To: Edward S.Marion
Assistant Attorney General
123 West Washington Avenue
Madison, Wisconsin 53702

PLEASE TAKE NOTICE, that the petitioner-appellant, Amek bin-Rilla, a/k/as, James R. Preston, shall appeal for and upon constitutional and Federal Statutory grounds from the decision rendered in the Wisconsin Supreme Court in the entitled case on August 13, 1980 A.D. to the United States Supreme Court pursuant to Title 28 U.S.C. § 1257 (1).

(*) This Notice of Appeal filed in Wisconsin Supreme Court October 29th, 1980 A.D.

Petitioner-Appellant By,
Amekbin-Rilla
(James R.Preston)
Amek bin-Rilla, a/k/as
James R. Preston - Pro Se
Box C Waupun, Wisconsin 53963

Dated: October 28th, 1980 A.D.
at Box C Waupun, Wisconsin 53963.

APPENDICE (C)

Office of the Clerk

SUPREME COURT

STATE OF WISCONSIN

80-5816

Madison, August 13, 1980

To Amek bin-Rilla a/k/a
James R. Preston
Box C
Waupun, WI 53963

Edward S. Marion
Asst. Attorney General
Rm. 328, 123 W. Washington Ave.
Madison, WI 53703

The Court today announced an order in your case as follows:

No. 80-1317-W State of Wisconsin ex rel. Amek bin-Rilla a/k/a James R. Preston v. Thomas R. Israel

The court having considered the petitioner's motion for this court to take original jurisdiction to consider the petitioner's petition for writ of habeas corpus,

IT IS ORDERED that the motion is denied.

Coffey, J. and Abrahamson, J. did not participate.

APPENDICE (A)

MARILYN L. GRAVES

Clerk of Supreme Court.

SC. 105

HOWARD B. EISENBERG
STATE PUBLIC DEFENDER
(608) 266-3440
RONALD L. BRANDT (608) 266-8382
GARRETT N. KAVANAGH (608) 266-8383
RUTH S. DOWNS (608) 266-8388
RICHARD M. SALS (608) 266-8387
ALVIN E. WHITAKER (608) 266-8384
KENNETH P. CASEY (608) 266-8385
ROBERT J. PAUL (608) 266-8374
ASSISTANT STATE PUBLIC DEFENDERS

The State of Wisconsin

STATE PUBLIC DEFENDER
State of Wisconsin
123 West Washington Avenue
Main Floor
Madison, Wisconsin 53702
(608) 266-3440

March 26, 1975

80-5316

Mr. James R. Preston
a/k/a Amek bin Rilla
Box C
Waupun, Wisconsin 53963

Dear Mr. bin Rilla:

Our office has just been appointed to represent you with respect to the denial of your motion for modification of sentence on Marcy 21, 1975. This case has been assigned to me in my capacity as Assistant State Public Defender.

I have sent for the court record and transcript(s) relating to this case, and as soon as they arrive in my office and I review them, I shall make arrangements to visit with you at the Prison.

In the meantime, should you have any questions regarding this case, please to not hesitate to contact me.

Very truly yours,

Garrett N. Kavanagh

GARRETT N. KAVANAGH
Assistant State Public Defender

GNK/cje

EXHIBIT (C)

APPENDICE (B)